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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/142,043	12/01/1998	DANUTA EWA IRENA MOSSAKOWSKA	88362/104	1645

26633 7590 10/22/2002

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EXAMINER

HAMUD, FOZIA M

ART UNIT PAPER NUMBER

1647

DATE MAILED: 10/22/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/142,043**

Applicant(s)  
**MOSSAKOWSKA et al.**

Examiner  
**Fozia Hamud**

Art Unit  
**1647**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jul 12, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 37-57 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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### DETAILED ACTION

1. Receipt of Applicant's amendment and arguments in Paper No.31, filed 12 July 2002 is acknowledged.
2. Claims 37-57 are pending and are under consideration by the Examiner.
3. Receipt of the declaration under 37 CFR 1.132 filed on 12 July 2002 in Paper No.30 , is acknowledged. Consideration of the amendment filed on 12 July 2002 together with the declaration under 37 CFR 1.132, is sufficient to overcome the rejection of claims 37, 51 and 57 made under the judicially created doctrine of obviousness-type double patenting , the rejection of claims 37, 39 and 51-57 made under 35 U.S.C § 102(b) as being anticipated by Fearon and the rejection of claims 48-50 made under 35 U.S.C. 103(a) as being unpatentable over Fearon et al (WO 91/05047) in view of Capon et al (U.S. Patent 5,116,964).
4. The following previous rejections and objections are withdrawn in light of Applicants amendments filed in Paper No.31, 07/12/02:
  - (I) The rejection of claims 37-42 made under 35 U.S.C. 101.
  - (ii) The rejection of claims 37-57 made under 35 U.S.C. 112, first paragraph, for reciting the new matter language "**..does not comprise a mature short consensus repeat-3....**", is withdrawn.
  - (iii) The rejection of claims 37, 48 and 49 (and dependant claims) made under 35 U.S.C. 112, second paragraph is withdrawn.
  - (iv) The rejection of claims 37, 51 and 57 made under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2 and 10 of U.S. Patent No. 5,833,989, is withdrawn, because the recitation of "...polypeptide having only a partial SCR3

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sequence”, distinguishes instant claims from the claims of the Patent which are drawn to full length SCR3.

(v) The rejection of claims 37, 39 and 51-57 made under 35 U.S.C § 102(b) as being anticipated by Fearon et al (U.S. WO 91/05047), is withdrawn, (see section iv directly above).

(vi) The rejection of claims 48-50 made under 35 U.S.C. 103(a) as being unpatentable over Fearon et al (WO 91/05047) in view of Capon et al (U.S. Patent 5,116,964), is withdrawn.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5a. Claims 37-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5b. Claims 37-57, recite “an SCR3-derived polypeptide...”, this is a relative term which is subject to different interpretations, rendering the claims indefinite because, it is unclear how is this polypeptide derived from the third short consensus repeat (SCR3) region of the human complement receptor type 1 (CR1). Instant specification discloses several SCR3 derived polypeptides, including cyclized peptides and peptides attached to a core lysine structure. It is suggested that these specific limitations be recited in the independent claims. Appropriate correction is required.

5c. Regarding claims 39, 42 the phrases “...comprising a chemically reactive amino acid residue...”, and “wherein the polypeptide is altered to remove chemically reactive amino acid residues...”, render the claims unclear and confusing, firstly, all amino acids are chemically reactive.

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Applicants' argument that the meaning of this phrase is explained in the specification is not persuasive, because the specification on page 4, provides example of chemically reactive amino acids and does not define the phrase or what is included or excluded. Applicants' argument filed on 18 December 2001, on page 8, refers to one interpretation of the phrase "chemically reactive", however, the broadest definition of this phrase is that all amino acids are chemically reactive. Appropriate correction is required.

***Conclusion***

6. Claims 37-57 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Advisory Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fozia Hamud whose telephone number is (703) 308-8891. The Examiner can normally be reached on Monday-Thursday from 8:00AM to 4:30PM (Eastern time).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (703) 308-4623.

Official papers filed by fax should be directed to (703) 308-4227. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Fozia Hamud  
Patent Examiner  
Art Unit 1647  
15 October 2002

  
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